vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.640 OF 2006
IN
SUIT NO.1227 OF 1998

Leela Gajanan Raote & Anr. ... Plaintiffs

V/s.

Krishnakumar S. Raote & Anr. ... Defendants

Ms.Rajani Iyer i/b M/s.Prakash & Co.for Plaintiffs
Mr.M.K. Nesari for Defendant No.1
Mr.Mukesh Subramaniam for Defendant No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 22, 2006**

P.C.:

. The Plaintiffs have filed the Motion for the following reliefs:

> (a) that the leave be granted to the Plaintiffs and Defendant No.2 to accept the surrender of all the rights, title, interest and claims, including the tenancy rights of Room No.6 admeasuring 260 sq.ft. (carpet) from the only heir and legal representative of the deceased tenant late Mr.Gajanan G. Pathare, one Mr.Pandharinath G. Pathare, situated on the ground floor of the Suit building and to accept quiet, vacant, peaceful and physical possession of the said Room No.6 from the said Mr.Pandharinath G. Pathare;
>
> (b) that the Plaintiffs and Defendant No.2 be permitted/allowed to create new tenancy in respect of the said Room No.6 on such terms and conditions as this Hon'ble Court may deems fit and proper simultaneously with the surrender and against the acceptance of possession of the said Room No.6;

2. The suit property was owned by one Shantaram Raote who was the grandfather of the plaintiff and the

father of Defendant Nos.1 and 2. The plaintiffs are the daughters of the 3rd brother, Gajanan Raote who expired prior to the filing of the suit. The suit has been filed by the plaintiffs for partitioning the suit property and/or dividing the same by metes and bounds between the plaintiffs and defendants. The plaintiffs have also sought a direction against the defendants for rendering accounts, amongst other prayers. Notice of Motion No.1090 of 1998 was taken out by the plaintiffs. By order of 6.10.1999, the plaintiffs and the defendants were restrained from creating any third party interest in the property and from creating any fresh tenancy or transferring any tenancy during the pendency of the suit, except with the leave of the Court.

3. The present Motion has therefore, been filed for obtaining leave to accept the surrender of the tenancy in respect of room No.6 admeasuring 260 sq.ft. (carpet) in the suit building and to create a new tenancy in respect of that room. According to the plaintiff, Gajanan G. Pathare was the tenant in respect of Room No.6. His brother Pandharinath being his legal heir and representative continued as the tenant of that room after the death of Gajanan. It is the case of the Plaintiffs that Pandharinath who is extremely old desires to surrender the tenancy in order that it may be transferred. The plaintiffs and Defendant No.2 are agreeable to transfer the said tenancy to the incumbent for which a consideration of Rs.5,60,000/- will be paid

to the owners. According to the plaintiffs, they are entitled to a 1/3rd share of this amount aggregating to Rs.1,86,666/-. Defendant Nos.1 and 2 are also entitled to an equal amount each as their respective shares.

4. It appears that Defendant No.1 is not agreeable to the transfer as he claims that he is entitled to half the share in Rs.560,000/-. According to Defendant No.1, he is entitled to half the share since his mother the late Savitribai had bequeathed her share to him. He claims to have filed a probate petition which is pending before this Court.

5. Although Defendant No.1 in his affidavit in reply to the Motion has stated that he has been informed by some broker that a purchaser would be prepared to pay Rs.18 lacs for the transfer of the tenancy of the premises in question, there is no actual offer made nor is there anything on record to show who is the intending tenant.

6. In these circumstances, the following order would meet the ends of justice:

i) The amount of Rs.560,000/- will be shared equally by the plaintiffs and the defendant Nos.1 and 2; the plaintiffs receiving Rs.1,86,666/- together and Defendant Nos.1 and 2 receiving the same sum individually. This

amount will be received by the plaintiffs and the defendants without prejudice to the rights and contentions of the parties in respect of the probate petition of Savitribai's will which is pending and the present suit.

ii) The share of Defendant No.1 shall be deposited in Court by the Plaintiffs within four weeks from today. Defendant No.1 is entitled to withdraw this amount.

iii) In the event Defendant No.1 succeeds in proving the will of Savitribai in the Petition pending in this Court and establishing that he is entitled to 1/2 the share in the suit property, the plaintiffs and Defendant No.2 undertake to redeposit in this Court the money due and payable to Defendant No.1, on such shares being determined. This undertaking to be filed by the plaintiffs and Defendant No.2 to this Court within two weeks from today.

7. Notice of Motion is disposed of in the above terms.